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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION No. 1 OF 1999

1. Rizwan Mahiboob Shaikh,)
Age 25 years, Occu.-Labour)
Residing at 823, North Kasba)
Solapur.)
)
2. Haroon Jahangir Shaikh,) Applicants
Age 24 years, Occu. Mechanic) (Original
Residing at Sangmeshwar Nagar) Accused
Akkalkot Road, Solapur.) (Nos.1 & 4)
)
(Presently lodged at Solapur)
District Prison Solapur.))

Vs.

State of Maharashtra ,) . . Respondent

None for the applicants.
Mrs. M. M. Deshmukh, APP for respondent.

CORAM : V. R. KINGAONKAR,J.

DATE : APRIL 13, 2007.

ORAL JUDGMENT

This Criminal Revision petition arises out of judgment rendered by the learned Sessions Judge,

Solapur in Crim. Appeal No. 37 of 1996. The petitioners herein were original accused nos. 1 & 4 before the trial court. They along with other 2 accused were tried before the learned Judicial Magistrate F.C. Solapur in Regular Criminal Case No. 37 of 1993 for offence punishable under section 452, 323, 326, read with section 34 of I.P.Code and under section 135 of the Bombay Police Act. The learned Magistrate convicted all the 4 accused for offence punishable under section 452 read with sec. 34 I.P.Code and sentenced them to suffer S.I. for one year with fine of Rs.300/-each in default to suffer further S.I. for 2 months; so also convicted accused nos. 1 & 4 for the offence punishable under S. 326 of I.P.Code and sentenced them to suffer one year's simple imprisonment and to pay fine of Rs. 200/-in default to suffer one month's simple imprisonment more. The appellate court was pleased to set aside order of conviction and sentence in respect of offence punishable under S. 452 read with S. 34 of I.P.Code. The learned Sessions Judge, however, maintained the order of conviction, and sentence in respect of the offence punishable under S. 326 of I.P.Code, imposed on accused no. 1 Rizwan

and accused no.4 Haroon. The learned advocate Mr. Amin H. Solkar for petitioners remained absent when the matter was called out in the morning session, so it was adjourned and was taken up after recess. He remained absent. Then it was again called out. This being a revision petition, he cannot claim hearing as a matter of right, in view of section 403 Cr.P.C. I have gone through the record and proceedings with the help of the learned APP Mrs. M. M. Deshmukh. The learned APP argued that the impugned order of conviction and sentence is quite legal and proper. She would submit that scrutiny of evidence of witnesses has duly been undertaken by the trial court and the first appellate court, and there is no element of perversity in the finding of the appellate court. Hence, Mrs. Deshmukh, learned APP urged to dismiss the revision petition.

2. It appears from the recitals of the FIR (Exh.9) that the complainant was at his house in the relevant evening, when the petitioners and the other 2 accused went there. The version of PW 1 Salim purports to show that the incident had occurred due to his having married another woman.

Wife of complainant PW Salim happens to be the daughter of original accused no.3- Allabaksh. It is manifest that due to the second marriage performed by the complainant and on account of the matrimonial discord with his wife, the accused persons were enraged. The recitals of FIR (Exh.9) would show that the 4 accused immediately started abusing the complainant, saying that he was asking too many questions to his wife. The recitals of the FIR purports to show that the petitioner no.1 gave blow of sword on the left wrist and the petitioner no.4 gave blow of knife on the left side rib of the complainant. The role ascribed to both of them is consistently stated by P.W. Salim whilst in the witness box. There is medical evidence regarding nature of injuries sustained by the complainant. The version of PW 5 Dr. Ashok goes to prove that the complainant had received 4 injuries, as described in the medical certificate (exh. 31). The complainant had suffered and sustained one contused lacerated wound, 2 incised wounds on the chest and on the wrist. The complainant as well as other witnesses have given satisfactory account of the incident. Their versions are accepted by the trial

court and the first appellate court. It is not necessary to undertake re appreciation of the evidence at this stage. That is not the scope of the revision. On perusal of the judgment of the learned Sessions Judge, I do not find any patent error committed by him, while confirming the order of conviction and sentence, as passed against the petitioners. Significantly, the weapons are duly recovered at the instance of the petitioners. The recitals of the spot panchanama (exh.36) go to show that blood stains were found on the wall of the bathroom and pillow; so also one wooden rafter was found to bear a mark of the sword blow. These are tale telling circumstances. The eye witness account coupled with the medical evidence and the recitals of the spot panchanama have been duly considered by the appellate court. The appellate court allowed the appeal of the original accused nos. 2 and 3 and acquitted them. The impugned order cannot be faulted only on account of some discrepancies or contradictions found here and there. Under the circumstances, I do not find any substantial reason to disturb the finding of the appellate court in the exercise of limited jurisdiction available

under section 401 of the Code of Criminal Procedure.

3. In the result, the revision petition being without merits, is dismissed. The petitioners shall surrender to bail in the trial court.

Sd/-
[V. R. KINGAONKAR, J.]